IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 476

SEARS, ROEBUCK AND CO.,

Petitioner,

—*vs.*

CARPET, LINOLEUM, SOFT TILE & RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO,

AND

FRANCIS SPERANDEO, REGIONAL DIRECTOR OF THE TWENTY-SEVENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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CARPET, LINOLEUM, SOFT TILE & RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO,

AND

FRANCIS SPERANDEO, Regional Director of the Twenty-Eighth Region of the NATIONAL LABOR RELATIONS BOARD,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

On April 27, 1970 this Court rendered a decision holding the instant case to be moot, notwithstanding the Court's prior granting of the Petition for Writ of Certiorari which had been opposed on the basis of such mootness, and without addressing itself to the merits of the substantive questions which had been briefed and argued orally to the Court.

Petitioner, Sears, Roebuck and Co., had sought as an adjudication here of its right to obtain appellate review of a district court's refusal to grant injunctive relief pursuant

to Section 10(l) of the National Labor Relations Act, 29 U. S. C. § 160(l), when the Board declined to appeal. This Court's finding of mootness was predicated on the fact that the Board had rendered a "final adjudication" of the merits of the underlying dispute, to which injunctive relief under Section 10(l) was ancillary, prior to this Court's decision, since the rendering of such a "final adjudication" was said to terminate Soars' right to injunctive relief even had it been granted by the district court, this Court held that the question of the propriety of its denial had become moot.

The instant Petition for Rehearing, filed pursuant to Rule 58 of the rules of this Court, is based upon the following contentions: (a) the general tests governing the granting of such petitions, including the intervention of new and relevant matters, are satisfied; (b) in rendering its judgment that the case was moot the Court applied principles and authorities which were inappropriate to the facts while failing to apply and rely upon other established principles and authorities which were appropriate and which would have yielded a contrary result; and (c) the Court's decision not only failed to effect a needed clarification of the meaning and limits of Section 10(l), as even the Board expressed a hope it would do, but that decision affirmatively contributed to an existing confusion in the interpretation of this Court's opinions on mootness.

In view of this existence of such an increasing uncertainty [illegible] the important and still developing area of the Court's mootness-holding, an area which has also elicited

substantial scholarly criticism, together with the continuing need to explicate the undecided limits of Section 10(c), petitioner respectfully urges the granting of this Petition for Rehearing in its own interest and in the interest of an orderly and generally beneficial development of the Law.

I EVENTS OCCURRING SUBSEQUENT TO THIS COURT'S DECISION HEREIN WARRANT AND SUPPORT THE GRANTING OF A REHEARING

In evolving its practice with respect to the treatment of petitions for rehearing, this Court has recognized, as grounds which warrant rehearing, the subsequent decision or filing in this Court of cases involving the same or similar issues. Accordingly, this Court has granted a petition for rehearing of a decided case both when there existed an intervening and inconsistent Supreme Court decision and when the same or related issue subsequently came before the Court in another pending case. Each of these circumstances is present in the instant matter and warrant the granting of a rehearing here.

A The Rendering of an Intervening Inconsistent Decision

In *N.L.R.B. v. Boaz Spinning Co.*, 352 U.S. No. 140, this Term, decided subsequent to *Scott*, this Court held that case not to be moot although the dispute involved there was substantially less viable than in *Scott*, where this Court reached a contrary result. In *Boaz* the unfair labor practices committed, which had occurred in connection with a representation election, had entirely ceased. The respondent employer had complied with the Board's remedial order. The Board had thereafter conducted a second election